BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Steven M. Minton, et ux Map 017-00-0, Parcel 320.00 Commercial/Residential Property Tax Year 2004	))))	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assess of Property ("Assessor") valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$85,700	$0	$85,700	$28,925

An appeal has been filed on behalf of the property owner with the State Board of Equalization on September 21, 2004.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on April 4, 2006, at the Davidson County Property Assessor's Office; present at the hearing were Steve and Elaine Minton, the taxpayers who represented themselves, A. Dean Lewis from the Division of Assessments for the Metro. Property Assessor, Jimmy Clary, Residential Appraisal Supervisor, David Diaz-Barriga, Administrative Services Officer and Mr. William Herbert, IV, Attorney for Metropolitan Government.[1]

I. JURISDICTION

The appeal was filed on September 21, 2004, on behalf of the Taxpayers before the State Board of Equalization.

The Notice of Final Decision from the Metropolitan Board of Equalization was sent to the Taxpayers on August 2, 2004 with the note that:

> Any appeal to the State Board of Equalization must be filed within **45 days** of the date this notice was sent.[2]

Obviously, the untimely filing brings into question whether the State Board even has jurisdiction or authority to hear these appeals. The appeals should have been postmarked no later than September 16,

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[1]The Tennessee Division of Property Assessments had requested and been granted permission to Intervene. While not present at the hearing they requested their Brief be considered when deciding the issues in this cause.

[2]T.C.A. § 67-5-1412 (e).

2004, to satisfy the 45 day requirement, they were not.[3] Unfortunately the issue was raised at the first time at this hearing.[4]

Assuming arguendo that jurisdiction exist the administrative judge is of the opinion that judicial economy dictates resolving the issue as to whether the taxpayers have sustained their burden in proving that they are entitled to the requested relief on the issue of value.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of about 5.37 acres located in the Goodlettsville areas of Davidson County. Although the property has a Greer Road address, there is no actual road frontage. Access to the property is by way of a 50' side perpetual ingress and egress easement, located on the property is a Communications Facility owned and used by the Metropolitan Government. The tower is built on a 0.24 acre site on the rear portion of the subject property which is leased to Metropolitan Government by the taxpayers.

The taxpayers contend that subject property should be valued at $25,000.00 rather than the values established by the Metropolitan Board of Equalization. In support of their contention they allege that they paid "$14,000.00 for the property, tower on property, property drops off 350 feet and unable to utilize for bldging[sic]. Ret[sic] of way shared with other property owners & unable to use other than right of way. No road frontage."

The assessor contends that the properties are assessed correctly and should be valued at the values previously assessed by the County Board of Equalization.

The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

At the current hearing, the taxpayers allege it is a conflict of interest for the Metro. Assessor's Office to be involved in this case because the lessee is also a Metro Agency (Public Property Administration). Mrs. Minton also contends that Metro is continuously late with payment on the rent but calls to complain have not remedied the situation. Mrs. Minton further stated that while the property derives income it should not be classified commercial, "who rents or leases for free". Mrs. Minton states that based on the statute quoted by Judge Norville the property should be exempted since the government

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[3]Mr. Minton, in his post hearing submission, has stated that he now remembers mailing the documents on 9-16-04, the date of the notarization of his signature although there are no documents to support this contention.

[4]This hearing is the result of Orders from Judge Forrest Norville and the current administrative judge granting the County's and State's request for Reconsideration from the original Initial Decision and Order of July 8, 2005. The time limitations imposed by T.C.A. §67-5-1412(e) are jurisdictional and cannot be waived by the parties. Tenn.Op.Atty.Gen. No.92-62.

uses it and derives the benefit from it. Furthermore under T.C.A. §67-5-212 the property is used purely and exclusively by the government. As to the issue of value, the presentation by the taxpayer shows that a lot of time and effort were put into preparing for this hearing. The Taxpayers exhibits (exhibit numbers 1 thru 8) shows that thoughtful planning, research and work were used in the compilation; however, the germane issue is the value of the property as of January 1, 2005.

In response to the arguments advanced by the taxpayers the County responds that:

> (1). On the issue of Exemption: The taxpayers did not make an application requesting that the property be exempted,[5] there was no testimony taken at the original hearing regarding the exemption[6], and that Judge Norville just entered an Order exempting that portion of the subject property used by Metro for the communications tower. The County states that granting the exemption was beyond the scope of [the Judge's] authority. The purpose of the statute, according to the County, would be to provide for pro-rated taxes were applicable here the statute was not applicable. Additionally, the County contends that the owner of the property derives a profit from the lease; the property is not "exclusively" used for the public benefit.
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> (2). On the issue of including tax year 2005: Mr. Lewis testified that 2005 was a re-appraisal year and the appeal could not be extended to 2005, the taxpayers would have to make a separate timely and appropriately filed appeal, here they did not.
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> (3). On the issue of value for tax year 2004: Mr. Lewis stated that while the taxpayers submitted a number of properties that they allege were comparable to the subject the are several major differences that were not addressed. Mr. Lewis stands by the values from the Metropolitan Board of Equalization.

As previously noted, the Division of Property Assessments for the State of Tennessee relied on the brief they had previously filed.

In response to the Taxpayer's argument on the exemption status of their property: Article 2, § 28 of the Constitution of the State of Tennessee provides that "all property real, personal or mixed shall be subject to taxation, but the Legislature may except . . . such as may be held and used for purposes **purely** religious, charitable, scientific, literary or educational, . . ."(emphasis added)

The legislature exercised their power to grant a tax exemption by enacting Tenn. Code Ann. § 67-5-212 (1989) which states in relevant parts:

> (a) (1) (A) There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution which is occupied and used by such institution or its officers **purely and exclusively** for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists, or which is

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[5]Question 12 on the appeal application had a space for the taxpayer to check if they were alleging an exemption, it was not checked.

[6]The exemption statute T.C.A. § 67-5-203 Government Property deals with property "of" a governmental entity, here the property is not owned by a governmental entity, it is owned by the taxpayers.

> occupied and used by another exempt institution purely and exclusively for one (1) or more of the purposes for which it was created or exists under an arrangement where under the owning institution receives no more rent than **one dollar ($1.00) per year**; provided, that the owning institution may receive a reasonable service and maintenance fee for such use of the property; and provided further . . .
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> (3) The property of such institution shall not be exempt if:
> (A) . . . .
> (B) The real property of any such institution not so used **exclusively** for carrying out thereupon one (1) or more of such purposes, but leased or otherwise used for other purposes, whether the income received there from be used for one (1) or more of such purposes or not, shall not be exempt; but if a portion only of any lot or building of any such institution is used purely and exclusively for carrying out thereupon one (1) or more of such purposes of such institution, then such lot or building shall be so exempt **only to the extent of the value of the portion so used,** and the remaining or other portion shall be subject to taxation. (emphasis added)
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> We should point out that in this state the exemption in favor of a religious, scientific, literary, or educational institution is liberally construed, Mid-State Baptist Hospital, Inc. v. City of Nashville, 211 Tenn. 599, 366 S.W.2d 769 (1963), whereas there is a presumption against exempting other property from taxation. United Canners, Inc. v. King, 696 S.W.2d 525 (Tenn. 1985).

The Administrative Judge must also consider:

> It is a fundamental rule that all property shall be taxed and bear its **just share** of the cost of government, and no property shall escape this common burden, unless it has been duly exempted by organic or statute law; and that one claiming such exemption has the burden of showing his right to it. 2 Cooley on Taxation (4th Ed.) sec. 672; American Bemberg Corp. v. Elizabethton, 180 Tenn. 373, 378, 175 S.W.2d 535; American Nat. B. & T. Co. of Chatta. v. MacFarland, 209 Tenn. 263, 352 S.W.2d 441, 443, 444. (emphasis supplied)
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> "Taxes are the life blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state, and essential to the perpetuity of its institutions; consequently he who claims exemption must justify his claim by the clearest grant of organic or statute law. Knoxville & O. R. Co. v. Harris, 99 Tenn. 684, 693, 43 S.W. 115, (Tenn.App. 1897)
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> . . . an applicant for exemption from property taxation has the **burden of proving its entitlement to the exemption.** City of Nashville v. State Board of Equalization, 360 S.W.2d 458, 461 (Tenn. 1962) (emphasis supplied)

In this case the property in question is a vacant tract of land owned by the Mintons' since December of 1989; they entered a lease agreement with the Metropolitan Government of Nashville Davidson County for the Greer Road Radio Tower Site on August 9, 1998. Since that time to present the Taxpayers have never filed an application for exemption nor have they ever claimed that the property was exempt.[7] As noted in the State's brief in when analyzing Judge Norville's Initial Decision and Order: The

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[7]Unfortunately Judge Norville is deceased and there is no indication in the file as to why he felt compelled to *sua sponte* grant the taxpayers an exemption.

mere fact that the 0.24 acre parcel was leased to a governmental entity does not *ipso facto*, make the 0.24 parcel exempt. The Administrative Judge erred by not requiring the Taxpayer to meet the burden of proving why an exemption should be granted.

It is the opinion of this administrative judge that the subject property is not entitled to an exempt status for several reasons, first, it is not owned by an exempt organization, it is not used purely and exclusively for exempt purposes and further it is not entitled to any pro-ration of *ad valorem* taxes because T.C.A.§ 67-5-201(b)(1) requires that in order to be able to prorate taxes between an exempt entity and a non exempt entity a transfer or conveyance must be made by sale, lease or otherwise. In this case, it would be a transfer between the Taxpayers, a nonexempt entity, and the Metropolitan Government, an exempt entity. Furthermore the property must used exclusively for public, county or municipal purposes there is no proof in the record to support this contention. Additionally, even if for a far fetched remote argument you assume that it's use as a phone tower is an exempt use the Mintons' admittedly receive more than $1.00 a year in rent, as noted in their testimony and on their appeal for they receive $7200.00 per year from the Government for the use of the tower. The Taxpayers fail to carry their burden to prove they are entitled to relief on this issue.

As to the issue of including the tax 2005 with this appeal: In the opinion of the administrative judge Mr. Lewis is correct 2005. With the re-appraisal of property comes new values with a new Notice of Appraisal, Classification and Assessment with new responsibilities for challenging the value if the taxpayer so chooses. However, based on a probable argument that the Taxpayers relied on the Order of Judge Norville [8] and did not seek statutory remedies for tax year 2005 the Taxpayers have not sustained their burden and are not entitled to relief.

As to the issue of Value of the subject property: Since the taxpayers are appealing from the determination of the Davidson County Board of Equalization, they have the burden of proof. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board,* 620 S.W. 2d 515 (Tenn.App. 1981).

Tennessee Code Annotated § 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its **sound, intrinsic and immediate value**, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values…."

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[8]The hearing was held on March 24, 2005 and the Initial Decision and Order was entered on July 8th, 2005, by that date the time had passed for the Taxpayers to request a hearing before the Metropolitan Board of Equalization (June 1, 2005) to address the 2005 tax year, they would have to have filed with the State Board of Equalization by September 29, 2005 and have a hearing on Jurisdiction.

After having reviewed all the evidence in this case; the administrative judge finds that the taxpayers have not sustained their burden and that subject property should remain at the previously assessed values.

With respect to the issue of market value, the administrative judge finds that the Taxpayers simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2004, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

> The administrative judge finds that rather than averaging comparable sales, comparables must be **adjusted.** As explained by the Assessment Appeals Commission in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:
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> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. **Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments.** If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . . Final Decision and Order at 2. (emphasis supplied)

In analyzing the arguments of the Taxpayers the administrative judge must also look to the applicable and acceptable standards in the industry when comparing the sales of similar properties.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

> To apply the sales comparison approach, an appraiser follows a systematic procedure.
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> 1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
> 2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
> 3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
> 4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then ***adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable.*** This step typically involves using the most comparable sale properties and then adjusting for any remaining differences. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values. [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001). *Andrew B. & Majorie S. Kjellin,* (Shelby County, 2005).

III. ORDER

It is therefore ORDERED that the values and assessments be adopted for tax year 2004.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED on this the 4th day of May, 2006.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Steven and Elaine Minton
JoAnn North, Davidson County Assessor of Property